

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANESSA JORDAN,

Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF
LABOR,

Defendant.

19-CV-6422 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff brings this *pro se* action, for which the filing fee has been paid, alleging that Defendant unlawfully adjusted her claim for unemployment benefits.¹ The Court dismisses the complaint for the reasons set forth below.

STANDARD OF REVIEW

The Court has the authority to dismiss a complaint, even when the plaintiff has paid the filing fee, if it determines that the action is frivolous, *Fitzgerald v. First E. Seventh Tenants Corp.*, 221 F.3d 362, 363-64 (2d Cir. 2000) (*per curiam*) (citing *Pillay v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995) (*per curiam*) (holding that Court of Appeals has inherent authority to dismiss frivolous appeal)), or that the Court lacks subject matter jurisdiction, *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). “A complaint will be dismissed as ‘frivolous’ when ‘it is clear that the defendants are immune from suit.’” *Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) (quoting *Neitzke*, 490 U.S. at 327). The Court is obliged, however, to construe *pro se* pleadings

¹ Plaintiff filed her complaint without the filing fees or a request to proceed *in forma pauperis* (IFP). By order dated July 12, 2019, the Court directed Plaintiff to either pay the \$400.00 in fees or submit an IFP application. *See* ECF No. 3. Plaintiff paid the filing fees on July 16, 2019.

liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

Plaintiff brings this action against the New York State Department of Labor (DOL) alleging that the DOL unlawfully adjusted her unemployment benefits claim. She asserts that after a DOL employee requested information from Plaintiff, including bank statements, W-2 forms, and wage information for Plaintiff’s employment at Fairway Supermarket and Appleness Shoes, her benefits claim was adjusted. She attaches to her complaint a DOL Official Record of Benefit Payment History showing that she owes the DOL \$9,315.00. Plaintiff also attaches a copy of a June 20, 2019 letter directed to the DOL in which she requests a hearing to dispute the \$9,315.00 owed.

DISCUSSION

A. Eleventh Amendment Immunity

Plaintiff’s claims against the DOL must be dismissed. “[A]s a general rule, state governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states’ Eleventh Amendment immunity” *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009). “The immunity recognized by the Eleventh Amendment extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state.” *Id.* New York State has not consented to being sued in federal court, *see Trotman v. Palisades Interstate Park Comm’n*, 557 F.2d 35, 40 (2d Cir. 1977), and Plaintiff has alleged no facts showing that Congress has abrogated New York

State's immunity regarding her claims. The DOL, as a New York State agency, therefore, enjoys Eleventh Amendment immunity. *See, e.g., Greenidge v. NYS Dep't of Labor*, No. 14-CV-4958, 2015 WL 170574, at *3 (E.D.N.Y. Jan. 13, 2015), *appeal dismissed*, No. 15-371 (2d Cir. Mar. 13, 2015). The Court therefore dismisses Plaintiff's claims against the DOL because it is immune from suit and because Plaintiff's claims against it are frivolous. *See Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) ("A complaint will be dismissed as 'frivolous' when 'it is clear that the defendants are immune from suit.'") (quoting *Neitzke*, 490 U.S. at 327)).

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend her complaint.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. Plaintiff's complaint is dismissed as barred by the Eleventh Amendment.²

The Clerk of Court is directed to docket this as a "written opinion" within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

² The Court notes that there is a process within the DOL through which Plaintiff may seek review of the DOL's determination, and if she is dissatisfied there, she may file a claim in state court. *See* N.Y. Labor Law §§ 620-624. The Court takes no position on the merits of any claim or appeal Plaintiff may pursue in an appropriate forum.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: August 20, 2019
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge